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THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH

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CHRISTOPHER C. FUCCI, et. al,

Plaintiffs,

v.

WILLIAM BOWSWER, et. al,

Defendants.

**MEMORANDUM DECISION AND  
ORDER GRANTING [89] MOTION TO  
VACATE STAY**

Case No. 2:20-cv-00004-DBB

District Judge David Barlow

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This matter is before the Court on Plaintiffs’ [89] Motion to Vacate Stay as to All Parties Other Than the Rockwell Entities and Motion to Hold a Status and Scheduling Conference (the “Motion”).<sup>1</sup> Defendants Connie Greenawalt, Eastern 1031 Starker Exchange, LLC, and Eastern 1031 Starker Exchange, LLP (“Eastern Defendants”) filed a notice of non-opposition to the Motion.<sup>2</sup> No other party has responded to the Motion, and the time for filing a response is past. Having reviewed the Motion, and for good cause appearing, IT IS HEREBY ORDERED that the Motion is GRANTED.

**BACKGROUND**

On September 2, 2020, this action was automatically stayed pursuant to 11 U.S.C. § 362 when Defendants Rockwell Debt Free Properties, Inc. and Rockwell TIC, Inc. (“Rockwell

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<sup>1</sup> [ECF No. 89](#), filed February 18, 2021.

<sup>2</sup> [ECF No. 91](#), filed March 12, 2021.

Entities”) filed for bankruptcy.<sup>3</sup> At the time the stay was entered, the following motions had been filed:

- (1) Motion to Dismiss by Defendants First American Title Insurance Company and Kirsten Parkin (“First American Defendants’ Motion to Dismiss”); briefing is complete.<sup>4</sup>
- (2) [Amended] Motion to Dismiss Claims Against Defendants Rockwell Debt Free Properties, Inc.; Rockwell TIC, Inc.; Christopher J. Ashby; Jordan S. Nelson; and Scott W. Beynon for Failure to State a Claim (“Rockwell Entities and Rockwell Individuals’ Amended Motion to Dismiss”); briefing is complete.<sup>5</sup>
- (3) Connie Greenawalt and Eastern 1031 Starker Exchange, LLP’s Motion to Dismiss (“Eastern Defendants’ Motion to Dismiss”); briefing is not complete.<sup>6</sup>
- (4) Defendants Edmund & Wheeler, Inc., John D. Hamrick, Chris Brown[, ] TM 1031 Exchange, and Tim Marshall’s Motion to Dismiss Complaint Pursuant to Fed. R. Civ. P. 12(b)(2) & 12(b)(6) (“E&W Defendants and TM 1031 Defendants’ Motion to Dismiss”); briefing is not complete.<sup>7</sup>

## DISCUSSION

Under 11 U.S.C. § 362(a) an automatic stay precludes parties from “the commencement or continuation...of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the [bankruptcy] case[.]”

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<sup>3</sup> Notice of Bankruptcy Filing and Automatic Stay, [ECF No. 87](#), filed September 2, 2020.

<sup>4</sup> [ECF No. 23](#), filed March 3, 2020; [ECF No. 46](#), filed April 22, 2020; and ECF. No. 58, filed May 20, 2020.

<sup>5</sup> ECF. No. 36, filed March 20, 2020; [ECF No. 55](#), filed May 18, 2020; and [ECF No. 70](#), filed June 12, 2020.

<sup>6</sup> [ECF No. 79](#), filed July 30, 2020.

<sup>7</sup> [ECF No. 80](#), filed July 31, 2020.

The Tenth Circuit has held that “[t]he language of the statute extends stay proceedings only to actions ‘against the debtor.’ There is nothing in the statute which purports to extend the stay to causes of action against solvent co-defendants of the debtor.”<sup>8</sup> To do otherwise would “work a hardship on plaintiffs, by giving an unwarranted immunity from suit to solvent co-defendants.”<sup>9</sup> In this case, Rockwell Entities are the debtor parties. The non-debtor parties have not opposed the Motion or otherwise shown that vacating the stay will be a hardship to them. Therefore, it is appropriate and consistent with Tenth Circuit caselaw to lift the automatic stay with respect to all parties other than the Rockwell Entities.

Finally, in their Motion, Plaintiffs also represent that they have settled their claims against Defendants Chris Ashby, Jordan Nelson, Scott Benyon (“Rockwell Individuals”); and Greg DeSalvo, Belle Isle Enterprises LLC, and Results Real Estate LLC (“DeSalvo Defendants”). Once the stay is lifted, Plaintiffs have stated that they will file the appropriate documents to dismiss their claims against the Rockwell Individuals and DeSalvo Defendants.

### **ORDER**

IT IS HEREBY ORDERED that the automatic stay imposed based upon the bankruptcy filing of the Rockwell Entities is partially lifted, and this case shall proceed as to all parties except the Rockwell Entities. The stay shall continue with respect to Defendants Rockwell Debt Free Properties, Inc. and Rockwell TIC, Inc., including Rockwell Entities and Rockwell Individuals’ Amended Motion to Dismiss,<sup>10</sup> pending further order of the Court.

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<sup>8</sup> *Fortier v. Dona Anna Plaza Partners*, 747 F.2d 1324, 1330 (10th Cir. 1984).

<sup>9</sup> *Id.*

<sup>10</sup> [ECF No. 36](#), filed March 20, 2020.

IT IS FURTHER ORDERED that Plaintiffs shall file the appropriate documents related to the settlement and dismissal of their claims against the Rockwell Individuals and DeSalvo Defendants.

IT IS FURTHER ORDERED that the parties shall complete briefing on the Eastern Defendants' Motion to Dismiss<sup>11</sup> and E&W Defendants and TM 1031 Defendants' Motion to Dismiss<sup>12</sup> as follows:

- (1) Plaintiffs shall file their responses by May 10, 2021.
- (2) Defendants shall file their replies by May 24, 2021.

Once all briefing is completed, the Court will schedule a hearing if deemed appropriate.

Signed May 3, 2021.

BY THE COURT



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David Barlow  
United States District Judge

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<sup>11</sup> [ECF No. 79](#).

<sup>12</sup> [ECF No. 80](#).